

REMARKS

This Response is submitted in reply to the non-final Office Action mailed on April 19, 2007. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-780 on the account statement.

Claims 1, 3, 4, 6-10 and 13-20 are pending in this application. Claims 2, 5 and 11-12 have previously been canceled. Claims 1, 3, 4, 6-10 and 13-20 are rejected under 35 U.S.C. §112 and §103. In response, Applicants have amended Claims 1, 10, 13, 14 and 20. The amendments do not add new matter. In view of the amendments and for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1, 3-4, 6-10 and 13-20 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claims the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that it is unclear how to interpret “amino acids as tryptophan, free tryptophan and mixtures thereof” as recited in independent Claims 1, 10, 13 and 20. Moreover, the Patent Office asserts that it is unclear which protein of Claim 13 is being referred to in Claim 14. In response, Applicants have amended Claims 1, 10, 13, 14 and 20 for clarification purposes. These amendments are supported in the specification. See, PCT/EP00/08910 (“specification”), page 2, lines 15-17 and 32-33; page 3, lines 5-9; and page 9, lines 25-26.

Accordingly, Applicants request that the rejections of Claims 1, 10, 13, 14 and 20 under 35 U.S.C. §112, second paragraph, be withdrawn.

In the Office Action, Claims 1, 3-4, 6-10 and 13-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over JP 002158762 to Yonekubo et al. (“*Yonekubo*”) in view of U.S. Patent No. 5,916,621 to Georgi et al. (“*Georgi*”). Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claims 1, 10, 13 and 20 recite, in part, a composition comprising a milk protein comprising 5% or more of tryptophan. In contrast, Applicants respectfully submit that, even if combinable, the cited references fail to disclose or suggest every element of the present claims.

For Example, *Yonekubo* fails to disclose or suggest a composition comprising a milk protein comprising 5% or more of tryptophan as required, in part, by independent Claims 1, 10, 13 and 20. *Georgi* fails to remedy this deficiency, for the Patent Office only relies on *Georgi* to assert that *Georgi* teaches the use of hydrolyzed sweet whey protein from which caseino-glycomacropeptide has been removed. Consequently, the cited references fail to teach a composition comprising a milk protein comprising 5% or more of tryptophan.

The Patent Office asserts, however, that *Yonekubo* teaches that casein, a tryptophan-rich milk protein, is at 24-32% by weight and has a level of 5% or more of tryptophan. See, Office Action, page 5, lines 12-13. Applicants respectfully disagree. *Yonekubo* never teaches a milk protein having 5% or more of tryptophan. Instead, *Yonekubo* teaches adding L-tryptophan as a separate or free ingredient in the composition. Each time *Yonekubo* discloses using tryptophan, the ingredient appears as a separate addition to the composition, not as a sub-component of another ingredient. See, *Yonekubo* (English translation), page 2, lines 1-5; page 3, lines 1-5; and page 4, Practical Example 1. Further, in the only example disclosed in *Yonekubo*, tryptophan has a separate weight value, clearly indicating that tryptophan is a separately added ingredient. Moreover, if the Patent Office's assertion is indeed correct, tryptophan would be a sub-component of sodium caseinate. However, in Practical Example 1, whey powder is listed between sodium caseinate and the amino acid list (including tryptophan), which makes the assertion even more unlikely.

Further, even assuming sodium caseinate includes tryptophan, sodium caseinate is not a tryptophan-rich milk protein. In fact, one skilled in the art would know that sodium caseinate generally has a much lower amount of tryptophan than that required in the present claims. Specifically, sodium caseinate generally contains about 1.1% tryptophan. See, for example, www.americancasein.com/docs/Sodium%20Caseinate.doc; <http://www.casein.com/products.htm>; <http://sci-toys.com/ingredients/casein.html>. Consequently, *Yonekubo* fails to disclose or suggest a milk protein comprising 5% or more of tryptophan as required by the present claims.

For the reasons discussed above, even if combinable, *Yonekubo* and *Georgi* do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1, 3-4, 6-10 and 13-20 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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